

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

MFA.No. 814 of 2002(B)

OPMV.294/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA,
WAYANAD
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APPELLANT: PETITIONER

M.YESODA D/O. KRISHNAN NAIR,
RESIDING AT THERAMMEL HOUSE, P.O.MUNDAKUTTY,
KUPPADITHARA VILLAGE, VYTHIRI TALUK.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: RESPONDENTS

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1. M.MOHAMMED @ BAPPUTTY,
S/O. ABOOBACKER, RESIDING AT AMBALAVAN HOUSE,
P.O.KANIYARAM, MANANTHAVADY TALUK.
 2. N.MOHAMMED, S/O. IBRAHIMKUTTY,
RESIDING AT THAYYIL HOUSE, P.O.KANIYARAM,
MANANTHAVADY TALUK.
 3. THE NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, M.G.T. BUILDING, KALPETTA.

R3 BY ADV. SMT.A.SREEKALA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

M.F.A.No.814 of 2002

Dated, this the 10th day of December, 2007

JUDGMENT

Petitioner in O.P.(MV) No.294/1994 on the file of the Motor Accidents Claims Tribunal, Kalpetta, Wayanad is the appellant. The appellant filed a petition claiming compensation alleging that she sustained injuries in a motor vehicle accident on 1.12.1993. It was averred that while the appellant was walking through the side of Tellicherry-Mananthavady Public road an autorickshaw bearing registration No.KL-12/2806 driven by the first respondent came in a rash or negligent manner and hit against the body of the appellant. It was averred that the accident occurred solely due to the rash or negligent driving of the driver of the autorickshaw. Appellant was taken to hospital and treated as inpatient. She filed petition claiming Rs.50,000/- as compensation impleading driver, owner and insurer of the autorickshaw. Driver and owner filed joint written statement contending that the accident occurred due to the negligence of the appellant herself. Quantum of compensation claimed was disputed. It was contended that the vehicle was covered with valid policy of insurance and even if the appellant is entitled to get compensation the insurer is liable to pay the same. Third respondent insurer had filed a written statement admitting the existence of valid policy of insurance but disputing the negligence alleged. Tribunal found that the petitioner did not produce any document to prove the negligence of the driver of

the autorickshaw. It was also found that the petitioner did not adduce any evidence and dismissed the petition. Challenging that award this appeal is filed.

2. Learned counsel appearing for the appellant had produced copies of the FIR and final report filed in the criminal case as additional documents in this appeal. Accident occurred at 2 p.m. on 1.12.1993. FIR was registered on the next day while the appellant was undergoing treatment in the hospital. Copy of the FIR produced shows that the Doctor who attended the appellant issued an intimation to the Police informing that she was admitted in the hospital following a road traffic accident case. The number of the autorickshaw and name of the driver were also stated. After investigation the Police filed a final report alleging that the accident occurred due to the rash or negligent driving of the driver of the autorickshaw. Accident occurred on 1.12.1993. The Original Petition was filed in the year 1994. Considering that fact I am of the view that instead of remanding the case a final decision is to be taken by this Court itself. Exts.A1 to A3 shows that the appellant sustained fracture outer one third of left collar bone. She sustained other injuries also. Considering the nature of the injuries I am of the opinion that this case can be treated as one which would come within the ambit of Section 92A of the Motor Vehicles Act, 1939. Since the accident occurred prior to the amendment the appellant is entitled to get Rs.12,500/- as compensation under Section 92A of the repealed Act.

In the result, appeal is allowed in part. An award is passed in favour of the

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appellant allowing her to recover an amount of Rs.12,500/- with 6% interest per annum from the date of petition till the date of realisation. The third respondent insurer is directed to deposit the entire amount. Appellant is permitted to withdraw the amount on deposit after remitting the court fee if it is not yet paid.

**K. PADMANABHAN NAIR,
JUDGE.**

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K.PADMANABHAN NAIR, J.

M.F.A.No.814 of 2002

JUDGMENT

10th December, 2007.